



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 15, 2004

Mr. Loren B. Smith  
Olson & Olson  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2004-1957

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197615.

The City of Friendswood (the "city") received two requests for a police incident report, including a videotape related to the incident. You state that the city has released or will release the videotape to the requestor. You claim that portions of the remaining information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that portions of the information are excepted from disclosure pursuant to the informer's privilege in conjunction with 552.101. The informer's privilege, incorporated into the Public Information Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must

be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990) , 515 at 4-5 (1988). In this case, as a result of a report to police officers, the suspect was arrested and charged with class A assault, a violation of the Penal Code. As such, the report relates to the violation or possible violation of a criminal or quasi-criminal law. Further, it is evident from the submitted information that the report was made to an officer responsible for investigating such violations. However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for purposes of claiming the informer's privilege.

In this instance, the submitted incident report characterizes one of the two individuals at issue as a "witness," and the incident report reflects that he did not make the initial report of the suspected violation of law. We therefore conclude that the informer's privilege does not protect this individual's identity, and it may not be withheld under section 552.101 on that basis. We have marked those portions of the incident report related to the other individual that you may withhold from disclosure pursuant to section 552.101 in conjunction with the informer's privilege.

Further, we note that the submitted incident report contains Texas driver's license numbers that are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The city must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code.

Finally, the submitted incident report contains social security numbers. A social security number may be excepted from disclosure in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the submitted incident report are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that no such information was obtained or is maintained by it pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, we have marked those portions of the incident report related to one individual that you may withhold from disclosure pursuant to section 552.101 in conjunction with the informer's privilege. Additionally, the city must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code. Finally, the city must

withhold security numbers that are obtained or maintained by it pursuant to any provision of law enacted on or after October 1, 1990, in conformity with federal law. The remaining portions of the offense report must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

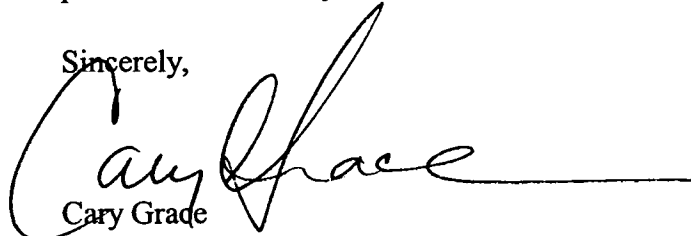
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/seg

Ref: ID#197615

Enc. Submitted documents

c: Mr. Ric Gonzales  
10171 Whitebrook  
Houston, Texas 77038  
(w/o enclosures)